

## THE CHANCELLOR :

These cases have been submitted and argued together, and with one exception depend upon the same facts.

The land originally constituted part of a tract, called "Gladstone's Choice," granted to Peter Ellis in the year 1687. By him it was conveyed to Richard Ashton, who died seized thereof, intestate and without heirs, so that it became escheat, and was granted as such to Joseph Collins in 1763 as "Bachelor's Folly."

In the resurvey upon the escheat warrant, eighteen acres and one-half acre were excluded because covered by the waters of Nanticoke river, and in this state of things in the years 1831 and 1835, the land so escheated was taken up under common warrants, the first by Elijah Badley, whose certificate contains one acre, and the other by John T. Darby, whose certificate contains eleven and three-fourths acres.

These certificates have been returned, the composition paid, and caveats being filed by a party interested in the escheat grant, the question is whether, according to the rules and practice of the land office and the equities of the matter, patents should be issued upon these certificates?

It is insisted upon the part of the caveator, and the principle is not to be and has not been disputed, that the escheat grant will pass all the land comprehended within the true location of the tract of land escheated. The earlier cases upon this subject have been recently sanctioned by the Court of Appeals in the case of *Casey's lessee vs. Inloes*, 1 *Gill*, 507, and there can, therefore, be no doubt that an escheat grant does, by operation of law, relate back to the original grant, and is within the rule of law of relation between grants and certificates. But this doctrine of relation is founded upon a principle of equity, and, therefore, when it clearly appears that the escheat grant was not intended to include all the land comprehended within the lines of the original tract, and that the party taking out the escheat warrant knew he was not including in his survey under it, all the land which had escheated, and did not pay for it all the foundation upon which the doctrine rests is removed, and it cannot consequently apply.